LESSONS FROM LOSSES
Transportation & Logistics

Teresa Dooley
Hill Rivkins LLP
tdooley@hillrivkins.com

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Lessons From Losses – Transportation & Logistics

Is the insured a broker or a motor carrier?

The Parties

❑ **The Shipper**

❑ **The Insured**
  ▪ Has both broker and motor carrier authority.
  ▪ The Insured's website provides that:
    • It has a vast and varied fleet that can handle the most sensitive and specialized equipment and
    • It has access to more than 5,000 trailers through its affiliations.

❑ **The Carrier**
  ▪ Is a licensed motor carrier with motor carrier authority.
  ▪ Has a broker-carrier agreement with the Insured that identifies the Insured as a broker.

Background

❑ The Shipper exclusively used the Insured to transport or arrange transportation of shipments.

❑ The Insured was handling 25 to 50 shipments a year for the Shipper.

❑ Whenever the Shipper asked the Insured to transport equipment on a flatbed trailer, the Insured brokered the load to another company (because the Insured did not have any flatbed trailers).

❑ The owner of the Shipper had been present when flatbed trucks (coordinated through the Insured) had been used in the past.

The Shipment & Loss

❑ The Shipper contacted the Insured, requesting a price quote for moving equipment on a flatbed trailer.

❑ As a part of this request, the Shipper requested team drivers. In response, the Insured advised that "I have notified my <u>logistics</u> to begin searching for a flatbed team."

❑ The Insured hired the Carrier to transport this shipment.

❑ The Insured provided its phone number as the emergency contact for this shipment, not the Carrier's phone number.

❑ When the equipment was tendered to the Carrier, a Bill of Lading was issued to and signed by the Shipper. On its face, the Bill of Lading identified the Carrier as the "carrier".

❑ Upon delivery of the equipment by the Carrier, it was discovered the equipment had sustained transit-related damages.

❑ The Insured's invoice to the Shipper did not identify the Carrier.

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Was the Company a Broker or a Motor Carrier?

❑ Initially, the Insured was characterized as a motor carrier because:

▪ The Insured's website could be interpreted as a representation by the Insured that it personally could handle the Shipper's equipment with specialized expertise;

▪ The Insured never named the Carrier in the emails or calls between them and the Shipper;

▪ With regard to the Insured's use of the term "logistics," "[a] reasonable person in the [Shipper's] shoes could not have been expected to know from the [Insured's] mere reference to its 'logistics dept' that the [Insured] was attempting to act as a broker";

▪ The Insured identified itself as the emergency contact for the shipment; and

▪ The Insured's invoice for the shipment never mentioned the Carrier.

❑ However, it was then held that there was an issue of fact as to whether the Insured was acting as a motor carrier because:

▪ The Insured's website could be interpreted to mean that the Insured could carry shipments with its own fleet of trailers or could broker shipments through its affiliations and

▪ The Insured's and the Shipper's prior course of dealings put the Shipper on notice that when it was told by the Insured that it would notify its "logistics department," this meant that it would seek a third-party carrier to transport the equipment.

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Lessons Learned

❑ The carrier/broker inquiry is "inherently fact intensive," thus not easy to determine.

❑ Therefore, a comprehensive understanding of the insured's business operations and relationships must be known to ensure that the insured has all the necessary insurance coverages.

❑ Some factors to consider:

- How is the insured licensed?
- How does it describe itself on its website?
- Does it have any assets?
- Are there any written contracts that sets forth the insured's roles and services?
- Does the insured physically handle or transport goods?
- Does the insured issue bills of lading or any other transportation documents, and if so, who is identified as a carrier in those documents?
- Does the insured accept full liability or responsibility for loss or damage to goods?

❑ You may find that:

- There is no coverage under the Contingent Cargo Coverage if the insured is found to be acting as a motor carrier;
- The insured's Contingent Cargo Coverage may not cover losses contractually agreed upon by the insured; or
- There may be coverage for a loss under a Motor Truck Cargo Liability, even if the insured brokered the load.

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Questions

Inland Marine Underwriters Association

14 Wall Street - Suite 820

New York, NY 10005

Phone: 212-233-0550

Website: www.IMUA.org

Kevin O'Brien, President & CEO

Lillian Colson, Vice President & Secretary

Eileen Monreale, Education/Training Specialist

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